

Applicant : Marc Vidal *et al.*
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REMARKS

Claims 108 and 149-160 are currently pending and under examination. Claims 150-154 are allowed.

Objections to the Specification

The Examiner objects to the specification, stating that “the Brief Description of Figure 2 appears to be a duplication of the description of Figure 10A” (Office Action at page 2).

Applicants thank the Examiner for noting this inadvertent error and have addressed this objection by amending the brief description of Figure 2 to include reference to the correct SEQ ID NOs. No new matter has been added.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 155-160 are rejected as lacking written description. The Examiner asserts that claims 155-160 contain new subject matter. Specifically, the Examiner states (at page 3 of the Office Action) that

Claim 155 (and its dependent claims) comprises a limitation whereby a cell is provided that has “a third counterselectable reporter gene” (see for example section (iii) of claim 155). There is no support for this limitation in the specification as originally filed. At best, Applicant has support for a cell that comprise [*sic.*] a “counterselectable” reporter gene, a “selectable” reporter gene, and a “screenable” gene (see for example page 42, lines 11-30).

Applicants respectfully disagree. Support for claims 155-157 can be found in the originally filed specification at, *e.g.*, page 32, lines 15-26. Claims 158-160 are supported by the originally filed specification at, *e.g.*, page 31, lines 14-16. Thus, claims 155-160 do not contain new matter, and Applicants respectfully request that this rejection be withdrawn.

Rejections for Obviousness-type Double Patenting

Claims 108 and 149 are rejected as unpatentable over claims 83, 86, 92, 98 and 99 of U.S. Patent No. 5,955,280. Once the present claims are deemed otherwise allowable, Applicants

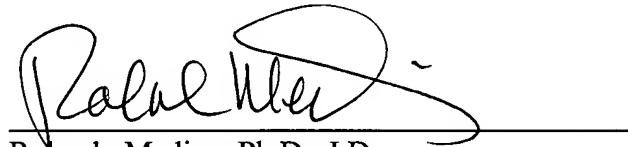
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will submit an appropriate terminal disclaimer by the common Assignees of the present application and the '280 patent. A terminal disclaimer is not an admission or comment regarding the merits of the rejection (Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991)).

Enclosed is a Petition for Extension of Time along with the required fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,



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Date: 22 February 2005
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